INVESTMENT IN INTERNATIONAL REAL ESTATE – U.S. LAWYERS BEWARE

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INTRODUCTION -- WHAT'S DIFFERENT ABOUT GOING ABROAD?

Real estate is the same everywhere. Or so one would think in this age of globalization. Just look at any international broker's web site. The office building in Singapore looks like the one in Manhattan. The house on the coast of Spain is advertised the same way as the house on the coast of Florida. If there is money to invest in real estate, why be constrained by something as artificial as national boundaries?

Of course, national boundaries do matter. And U.S. investors looking to invest abroad will look to their professional advisors, including attorneys, to identify the special considerations and minimize extra risks.

All of the factors to be considered when investing in real estate in the United States will of course apply when one contemplates a real estate investment abroad. What more must be considered when the real estate is in a foreign country? The outline below raises some of the issues.

INVESTING IN REAL ESTATE ABROAD: THE OTHER FACTORS

1. Is the Opportunity worth it? The U.S. is a big country, and a U.S. investor can always invest here. Are the projected returns worth it, given the factors mentioned here?

2. Currency Exchange. Investment abroad inherently involves the risk of currency fluctuations during the life of the investment. This applies to the following phases:

   a. Making the Investment – outflow from the U.S. and conversion to foreign currency.

   b. Operating Phase – bringing cash flow back to the U.S. and converting to dollars.

   c. Sale or Liquidation –the exchange rate impact on what comes back at the end.

   The ability to invest or repatriate funds may be affected by exchange controls of a particular country.

   The investor's information and computer systems will need to deal with prices, rents and other amounts stated in foreign currencies.

3. United States Tax Considerations. Should be examined for the same phases as currency risk:

    a. Initial investment

    b. Operating phase

    c. Sale or Liquidation

4. Tax Considerations in the Foreign Country. Same analysis:

    a. Initial investment

    b. Operating phase

    c. Sale or Liquidation

    Types of taxes in particular countries will have to be considered. They may include income taxes, transfer taxes, sales taxes and value added taxes. Taxes may apply on a national or local level, or both.

5. Effect of Tax Treaties on U.S. and Foreign Taxation.

6. Accounting Considerations.

    a. Accounting and auditing standards in the relevant country.

    b. How trustworthy are financial statements?

7. Property Information. Is needed information readily available? Is there an established brokerage community that can find opportunities and provide information?

8. Different Space Measurement. Square meters rather than square feet. How good are the measurements?

9. Go it Alone or Work with a Local Partner?

    a. Local partners bring expertise on local conditions that may be very different from those in the U.S. They may have access to local sources of funding and knowledge of local governmental processes relevant to real estate, as well as connections.

    b. The benefit of having a local partner may be offset by having to share control and profits.

    c. Having a local partner requires agreement on decision-making and how to resolve differences.

d. Local participation may be required in some countries. There will be tension if a local partner is used because it is required rather than desired.

10. Local Custom. Applies to real estate and real estate transactions, like anything else.

11. Political Considerations.

   a. Does the relevant country have a political climate that is generally stable?

   b. Is it hospitable to foreign investment?

   c. If there is instability, are expected returns high enough to justify the risk?

12. The Legal System.

   a. Existence of a legal system that respects private property rights.

   b. Legal restrictions applicable to foreign investment and property ownership by foreigners.

   c. Whether there is an established court system in which property rights can be enforced, and which would not favor local interests over foreign interests.

   d. Laws affecting real estate operations. Obvious examples are labor laws, tax laws, and laws affecting rents and lease terms. As foreign REIT's and other public forms of investment expand, securities laws and laws regulating markets will apply.

   e. Governmental regulation applicable to investment and development in the relevant country.

   f. Access to governmental agencies and personnel who have to approve anything relating to the investment. This applies particularly, but not exclusively, to construction and development.

13. Advisors. Consider, with respect to real estate investment in a particular country:

   a. The role of lawyers.

   b. The role of brokers.

   c. The role of surveyors.

   d. The availability, or absence, of title insurance.

   e. The role of accountants and other professionals.

   f. The role of expeditors having access to government or other resources.

Ability to find the expertise that is needed.

14. Estate Planning Considerations for Individual Investors.

    a. Estate and inheritance laws affecting bequests of real estate in a particular country.

    b. Estate tax considerations (in the foreign country and in the U.S.)

15. Exit Strategy. How to get out (with your money) if things go bad.

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